UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 00-2041 (DSD/SRN)

Joanne C. DeMillo,

Plaintiff,

v. **ORDER**

City of Chaska, Minnesota,
and its Police Officers
Michael Duzan, Julie Janke,
and John Kehrberg, individually,

Defendants.

Wallace C. Sieh, Esq., Route 1 Box 534,128 Riverview Drive, Minneiska, MN 55910, counsel for plaintiff.

Paul D. Reuvers, Esq., Kafi E. Cohn, Esq., Iverson Reuvers, 230 Town Line Plaza, 8585 West 78th Street, Bloomington, MN 55438, counsel for defendants.

This matter is before the court on the defendants' motion for summary judgment. Based on a review of the file, record, and proceedings herein, the court grants defendants' motion.

BACKGROUND

Plaintiff Joanne DeMillo ("DeMillo") filed this action alleging false arrest and that the City of Chaska and three of its police officers discriminated against her on the basis of

race and, therefore, violated 42 U.S.C. § 1983, 42 U.S.C. § 1981, and the Minnesota Human Rights Act ("MHRA"), Minn. Stat. 363.03 Subd. 4. On June 30, 1999, at 10:30 p.m., Chaska Police Officers Michael Duzan ("Duzan"), Julie Janke ("Janke"), and Sergeant Jon Kehrberg ("Kehrberg") were dispatched to 285 Crosstown Boulevard, Chaska, Minnesota, to investigate a disturbance involving a potentially intoxicated driver. (Duzan Dep. at 7.) Chaska dispatch reported that the intoxicated driver entered apartment 286 and identified that driver as Tim DeMillo. (Janke Dep. at 19.) Officers Janke and Duzan arrived at the dispatched location at 10:33 p.m. (Duzan Dep. at 7.) Sergeant Kehrberg arrived eight minutes later. (Kehrberg Dep. at 5.) By the time the officers arrived the disturbance had ceased. (Janke Dep. at 4.)

Officer Duzan and Sergeant Kehrberg testified that Joanne DeMillo appeared intoxicated when they spoke with her. (Trial court transcript of T1-99-4937 at 82,132.) Officer Duzan testified that Joanne DeMillo admitted to him that she had been driving that evening. (Id. at 90; see also implied consent transcript 15.) Officer Duzan observed that when he interviewed them, both DeMillos had bloodshot and watery eyes, slurred speech and a strong odor of alcohol. (Id. at 83.) Because the officers had information that led them to believe that both

DeMillos had been operating a motor vehicle while intoxicated, the officers requested that the couple submit to field sobriety tests, and each refused. (Id. at 81.) Joanne DeMillo was charged with violations of Minn. Stat. § 169.121 Subd. 1(a), Minn. Stat. § 609.50, and Minn. Stat. § 169.123 (order & J. of Judge Jean Davies at 1). DeMillo was found not guilty of the first two violations and guilty of the third. (Id. at 2.) In her complaint, DeMillo asserts that her arrest amounted to false arrest and imprisonment in violation of both the Fourth Amendment to the United States Constitution and Article I of the Minnesota Constitution. DeMillo, who is black, also claims that she is the victim of racial discrimination in violation of 42 U.S.C. § 1981 and Minn. Stat. § 363.03. Subd. 4. The defendants move for summary judgment on DeMillo's claims. For the reasons stated, that motion is granted.

DISCUSSION

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

This standard mirrors the standard for a directed verdict under Federal Rule of Civil Procedure 50(a), which is that the trial judge must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). Stated in the negative, summary judgment will not lie if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Id. at 248. In order for the moving party to prevail, it must demonstrate to the court that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). A fact is material only when its resolution affects the outcome of the case. Anderson, 477 U.S. at 248. On a motion for summary judgment, all evidence and inferences are to be viewed in a light most favorable to the nonmoving party. Id. at 250. The nonmoving party may not rest upon mere denials or allegations in the pleadings, but must set forth specific facts sufficient to raise a genuine issue for trial. Celotex, 477 U.S. at 324. If a plaintiff cannot support each essential element of its claim, summary judgment must be granted because a complete failure of proof regarding an essential element necessarily renders all other facts immaterial. Id. at 322-23. With this standard at hand, the

court considers defendants' motion for summary judgment.

A. The Rooker-Feldman Doctrine Precludes DeMillo's Claims.

Defendants assert that DeMillo's claims are precluded by the Rooker-Feldman doctrine. Under the Rooker-Feldman doctrine, federal district courts do not have jurisdiction to review challenges to state court decisions. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). A federal action is precluded "if the relief requested in the federal action would effectively reverse the state court decision or void its ruling." Charchenko v. City of Stillwater, 47 F.3d 981, 983 (8th Cir. 1995) (noting that "the only court with jurisdiction to review decisions of state courts is the United States Supreme Court"). In applying the Rooker-Feldman doctrine, a court must determine:

> exactly what the state court held and whether the relief requested by [plaintiff] in his federal action required determining the state court's decision is wrong or would void its ruling. If the relief requested in the federal action requires determining that the state court decision is wrong or would void the state court's ruling, then the issues are inextricably intertwined and the district court has no subject matter jurisdiction to hear the suit.

Id. The Eighth Circuit has explained:

> the federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided

> the issues before it. Where federal relief can only be predicated upon a conviction that the state court is wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state-court judgment.

Keene Corp. v. Cass, 908 F.2d 293, 297 (8th Cir. 1990) (citing Penzoil Co. v. Texaco, Inc., 481 U.S. 1, 25 (1987) (Marshall, J., concurring).

In the underlying criminal action, the Carver County District Court held that the Chaska police officers had probable cause to arrest DeMillo for violation of Minn. Stat. § 169.121 Subd. 1(a), and DeMillo was convicted of violating Minn. Stat. § 169.123. (Mem. to Order & J. of Judge Jean Davies at 2-4.) DeMillo asserts that she is not reopening these issues but rather litigating the issue of her warrantless in-home arrest, whether she was illegally seized and whether the police violated Minn. Stat. § 629.31 by arresting her after 10:00 p.m.

The issues raised by DeMillo are premised on the claim that the police improperly arrested DeMillo. Specifically, that the police had no probable cause to detain DeMillo. The Carver County District Court has found that the police had probable cause and acted properly in arresting DeMillo. In order for the Carver County District Court to find the police had probable cause, the court had to first determine that the police were

allowed to detain DeMillo while investigating the 911 dispatch. To grant DeMillo relief in this case the trier of fact would have to determine that the state court's ruling, that the police had probable cause to detain DeMillo, was wrong. Under the Rooker-Feldman doctrine, this court is precluded from doing so. Thus, the court grants the defendants' motion for summary judgment.

B. Collateral Estoppel Prevents DeMillo from Proceeding

Even if the court accepts DeMillo's argument that the Rooker-Feldman doctrine does not apply to this proceeding, DeMillo's claims are precluded by collateral estoppel. It is well settled that issues decided in state criminal proceedings may estop subsequent litigation for violations of civil rights under § 1983. Allen v. McCurry, 449 U.S. 90, 104 (1980); Simmons v. O'Brien, 77 F.3d 1093, 1096 (8th Cir. 1996). Under the full faith and credit statute, 28 U.S.C. § 1738, a federal court generally must afford a state court's determination the same preclusive effect that it would receive in the state's own courts. Marrese v. American Academy of Orthopedic Surgeons, 470 U.S. 373, 380 (1985); Teleconnect Co. v. Ensrud, 55 F.3d 357, 361 (8th Cir. 1995). Federal courts look first to the law of the state to "promote comity between state and federal courts that has been recognized as a bulwark of the federal system." Allen,

449 U.S. at 96. Because state law applies, the court must examine Minnesota law and determine what preclusive effect its courts would give to a finding of probable cause in a criminal trial.

The standards for invoking collateral estoppel in Minnesota are set forth in Kaiser v. N. States Power Co., 353 N.W.2d 899, 902 (citations omitted):

> (1) the issue was identical to one in a prior adjudication; (2) there was a final judgment on the merits; (3) the estopped party was a party in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

Here, the only element in dispute is the identity of the issues in this action and those adjudicated in DeMillo's state court criminal proceeding.

Minnesota courts have used three tests to determine the required degree of similarity that must exist between the issues in the two proceedings for collateral estoppel to apply. The traditional Minnesota test has been whether the same evidence will sustain both actions. Sunrise Elec., Inc., v. Zachman Homes, 425 N.W.2d 848, 851 (Minn. Ct. App. 1988) (citations omitted). In Johansen v. Prod. Credit Ass'n of Marshall Ivanhoe, 378 N.W.2d 59, 61 (Minn. Ct. App. 1995), the Minnesota Court of Appeals applied the test of "whether the primary right

and duty and the delict or wrong combined are the same in each action." In Anderson v. Werner Continental, Inc., 363 N.W.2d 332, 335 (Minn. Ct. App. 1985), the court employed a transactional approach that focused on whether the same operative nucleus of facts is alleged in support of both claims. All of these tests, as applied by the Minnesota courts would support the invocation of collateral estoppel.

The final judgment entered by the Carver County District Court explicitly determined that defendants had probable cause to arrest DeMillo for violations of Minn. Stat. § 169.121 Subd. 1(a), Minn. Stat. § 609.50, and Minn. Stat. § 169.123. Furthermore, DeMillo was convicted of the third of these violations. The Eighth Circuit has held that an arrestee's conviction for the underlying offense is a complete defense to a civil rights claim that the arrest was without probable cause. Malady v. Crunk, 902 F.2d 10 (8th Cir. 1990).

The Carter County District Court found probable cause to arrest DeMillo. There has been no showing that DeMillo was denied a full and fair hearing in state court. DeMillo was represented by counsel who specifically raised the issue of probable cause and argued for acquittal based on lack of probable cause to arrest DeMillo. The court finds no basis here to preclude the application of collateral estoppel and concludes

that DeMillo's efforts to retry her criminal conviction in this court must be denied.

C. DeMillo's State Law Claims.

Since this court lacks jurisdiction to hear DeMillo's claims, and no federal cause of action exists, there is no supplemental jurisdiction for this court to hear DeMillo's claims that are premised upon the Constitution and the laws of the State of Minnesota. See 28 U.S.C. §§ 1367(a) and (c)(3); United Mine Workers v. Gibbs, 383 U.S. 715, 726; Richmond v. Bd. of Regents of the Univ. of Minnesota, 957 F.2d 595, 598-99 (8th Cir. 1992).

CONCLUSION

For the reasons stated, **IT IS HEREBY ORDERED** that:

1. Defendants' motion for summary judgment is granted;

2. Counts I and II of the complaint are dismissed with prejudice; and

3. Count III of the complaint is dismissed.

LET THE JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 28, 2001

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David S. Doty, Judge
United States District Court